IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SECOND APPEAL No. 29 of 1988

HONOURABLE MR.JUSTICE KS JHAVERI

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1 Whether Reporters of Local Papers may be allowed to see the judgment ?

2 To be referred to the Reporter or not ?

3 Whether their Lordships wish to see the fair copy of the judgment ?

4 Whether this case involves a substantial question of law as to the interpretation of the constitution of India, 1950 or any order made thereunder ?

5 Whether it is to be circulated to the civil judge ?

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STATE OF GUJARAT - Appellant(s)
Versus
PORBANDR MUNICIPALITY & 1 - Defendant(s)

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Appearance :
MR K.P. RAVAL, APP, for Appellant(s) : 1,
RULE SERVED for Defendant(s) : 1,
MR YOGESH S LAKHANI for Defendant(s) : 2,

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CORAM : HONOURABLE MR.JUSTICE KS JHAVERI

Date : 03/08/2007

ORAL JUDGMENT

1. This appeal is directed against the common judgement and award dated 25.2.1986 passed by the learned Assistant Judge, Porbandar, in Regular Civil Appeal No.11 of 1986, confirming the judgement and decree dated 31st August 1985 passed by the learned Civil Judge (S.D.)

Porbandar in Regular Civil Suit No.109 of 1985 whereby the said suit was decreed.

2. The aforesaid appeal has been admitted for hearing on the following substantial questions of law:

> *"(1) Whether the lower courts were right in law in coming to the conclusion that the provisions of Section 65(2) of the Gujarat Municipalities Act, 1963 are not applicable to the present case?*
>
> *(2) Whether the Porbandar Municipality has legal right to sell the land without prior permission of the State Government?*
>
> *(3) Whether the impugned order passed by the District Collector, Junagadh is illegal and void?*
>
> *(4) Whether sale deed executed by the Porbandar Municipality in favour of the Co-operative Society is illegal as the Municipality has not sold it by public auction and whether this pint is concluded by the decision of this Court in the case of Bhajubhai H. Devani vs. Porbandar Municipality and others, reported in AIR 1984 (Gujarat) 134?*
>
> *(5) Whether the lower Courts were right in law in coming to the conclusion that the provisions of Section 258(2) of the Gujarat Municipalities Act, 1963 are not attracted to the facts*

of the present case?"

3. Out of the same proceedings Second Appeal No.35 of 1988 came to be filed by the State which was also admitted by framing very same substantial questions of law as mentioned above. The aforesaid Second Appeal No.35 of 1988 came to be disposed of by this Court by oral judgement dated 22nd February 2007 whereby this Court partly allowed the said appeal.

4. The facts involved and the substantial questions raised in the present appeal and in the aforesaid Appeal No.35 of 1988 are identical and therefore, on the very same reasonings this appeal is required to be partly allowed.

5. In the premises aforesaid, this appeal is allowed in part to the extent indicated above. It is made clear that after setting aside of the Order dated 21st January, 1985, the Order dated 29th November, 1983 passed by the Collector would come into being and before confirmation of the said order, the Collector would be obliged to give an opportunity of hearing to the plaintiff.

6. The suit to the extent indicated above is decreed. It is further directed that the plaintiff shall appear before the Collector on 14th September 2007 along with a copy of this judgement, informing the Collector what he is required to do. The plaintiff, after a notice from the Collector, would be entitled to raise all factual and legal pleadings before the Collector; he would be entitled to submit that in view of the language employed in Section 65/258, the Collector would have no jurisdiction to interfere in the matter and in the present set of circumstances, there would be no necessity to proceed further in the

matter. However, this order shall not affect the jurisdiction and discretion of the Collector, who would be required to pass a speaking order after giving due opportunity of hearing to all the sides. No costs. Let a decree be framed accordingly.

7. The Registry shall place a copy of the judgement and order dated 22nd February 2007 passed in Second Appeal No.35 of 1988 along with this order.

[K.S. JHAVERI, J.]

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